Supreme Court, U.S.
FILED

AUG 20 2002

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No. 01-1866

IN THE

Supreme Court of the United States

H. LLOYD WESTON,

Petitioner,

v.

FEDERAL EXPRESS CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Federal Express Corporation, is a wholly owned subsidiary of FedEx Corporation. The stock of FedEx Corporation is publicly traded on the New York Stock Exchange.

STATEMENT OF THE CASE

This is a simple breach of contract action. Petitioner, H. Lloyd Weston, ("Weston") asserts that Respondent, Federal Express Corporation ("FedEx") breached its shipping contract when there was a delay in the delivery of an international shipment from the United States to Rome, Italy containing paintings and painting frames for an art exhibition. Weston seeks recovery under theories of negligence and breach of contract.

FedEx asserts, and the lower courts agreed, that the Warsaw Convention, an international treaty governing the international transportation of goods, governs all claims associated with the shipment at issue. Weston alleges that FedEx committed "willful misconduct" and that the limitations of the Warsaw Convention, therefore, should not apply to this shipment. Weston has failed to produce any evidence of willful misconduct by FedEx. Furthermore, Weston puts forth a hypothesis that the Warsaw Convention *may* not govern the shipment at issue since the loss *may* have occurred off airport property. Plaintiff has offered absolutely no evidence or testimony that the shipment at issue moved off airport property. Because Weston failed to bring forth any evidence that created a genuine issue of material fact, the lower courts were correct in their holdings.

FedEx moved the district court for summary judgment on the grounds that Weston is barred from recovery by the terms and conditions of the Warsaw Convention or in the alternative, Weston's recovery is limited to $4,652.91 pursuant to the Convention. The district court found for the FedEx and limited Petitioner's recovery to $4,652.91. The Second Circuit, on de novo review, upheld that determination. It is that finding from which Petitioner seeks grant of this Writ.

Because the decision of the court of appeals was consistent with the prior rulings of this Court and numerous other federal courts, the Court should deny the writ.

REASONS FOR DENYING THE WRIT

I. There is No Compelling Reason to Grant Writ.

The petitioner urges this Court to review the ruling of the court of appeals because both the court of appeals and the district court improperly granted FedEx's motion for summary judgment. As Weston has stated, Summary Judgment should only be granted when there is no genuine issue as to any material fact. *See* Fed. R. Civ. Pro. 56(c), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). FedEx agrees. The lower courts also agreed that the cited standard is the one to be applied. It would appear Weston's real argument is that the courts below misapplied that standard.

This Court has laid out numerous factors that determine whether review on a writ of certiorari is appropriate. Although the relevant rule states that the factors are illustrative only, the rule does require a compelling reason for review in the absence of the listed factors. *See* Sup. Ct. R. 10. In this matter, there is simply no compelling reason for grant of the writ and certainly no conflicting decisions for this Court to resolve. Weston simply wants one more chance to persuade a court that a genuine issue of material fact exists.

Weston has alleged no conflict between any of the United States courts of appeals. He has further alleged no conflict between any holdings of the appellate courts and any state court of last resort. He has alleged no extraordinary departure by the court of appeals, which would require this Court's intervention. In short, he has presented no reason for further review. *See* Sup. Ct. R. 10.

The Supreme Court Rules also state that a writ is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. *See* Sup. Ct. R. 10. Weston's argument is, at best, a claim that the district court and court of appeals misapplied the summary judgment standard. Although FedEx disagrees that the court of appeals erred, their allegation of "misapplication of the law" is simply insufficient to warrant further review.

II. The Court of Appeals Ruled Correctly.

It is undisputed that in the absence of "willful misconduct" on the part of FedEx, the Warsaw Convention limits the carrier's liability based upon either the declared value of the shipment or, in the absence of a declared value, the weight of the shipment. Since there was no value declared for carriage, the court limited FedEx's liability to 250 francs per kilogram ($4,652.91).

The district court, in its order, properly cited a standard of willful misconduct as requiring "a showing that the carrier, or its servants or agents, acted with intent to cause damage, or acted recklessly with knowledge that damage would probably result." *Piamba Cortes v. American Airlines*, 177 F.3d 1272, 1290 (11th Cir. 1999), *cert. denied*, 528 U.S. 1136 (2000). Summary judgment was appropriate because Weston had the burden in both of the lower courts to "make a sufficient showing" of willful misconduct. *Celotex Corp.*, 477 U.S. at 323. This he did not do.

The district court made a specific finding that "after review of the evidence, the Court finds no evidence that raises an inference that FedEx's actions constitute willful misconduct." The court of appeals stopped short of the question of whether the alleged misstatements constituted willful misconduct. The court of appeals found that FedEx's

alleged misleading statements did not "cause" his damages. The Court of Appeals properly cited the convention's requirement that the damage must be "caused by [FedEx's alleged] willful misconduct." Article 25(1). The court found that the delivery could not have been made on time because Italian customs had not yet inspected the shipment. Late inspection, not misleading statements, was the cause of Weston's damage.

CONCLUSION

The decision of the Court of Appeals is consistent with federal law enforcing the limitations of liability as set forth in international treaties. Weston's entire argument is that the Court of Appeals improperly applied properly stated law. There is no compelling reason for grant of Weston's petition. The petition for writ of certiorari should be denied.

Respectfully submitted,

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